

June 2, 2000

Re: 00-0259

TO ALL PARTIES OF INTEREST:

Enclosed are copies of the Memorandum dated May 19, 2000 and the Supplemental Memorandum dated May 30, 2000 from the Hearing Examiner to the Commission regarding recommended action at the Pre-Bench Session on May 31, 2000 and the Bench Session on June 1, 2000.

Sincerely,

Donna M. Caton
Chief Clerk

DMC:jbm
Enclosure

Docket No.: 00-0259
Bench Date: 05-16-00
Deadline: 06-01-00 (if applicable)

MEMORANDUM

TO: The Commission
FROM: Larry Jones, Hearing Examiner
DATE: May 15, 2000
SUBJECT: Commonwealth Edison Company

Petition for expedited approval of implementation of a market-based alternative tariff, to become effective on or before May 1, 2000, pursuant of Article IX and Section 16-112 of the Public Utilities Act.

PENDING STATUS: An Interim Order was entered on April 27, 2000.

REQUEST: An application for rehearing was filed by Enron on May 12, 2000.

RECOMMENDATION: Dismissal of Enron's rehearing application as premature, without prejudice to being refiled after entry of a final order in this docket. Commission action could be taken on May 16, or on a later date such as May 31 or June 1.

Background

As the Commission is aware, an Interim Order in this matter was entered and served on April 27, 2000. The Interim Order authorized Commonwealth Edison Company ("ComEd") to file tariffs, which became effective May 1, 2000, incorporating a market index based methodology for purposes of determining market value ("MV") under Section 16-112 of the Public Utilities Act ("Act"). These tariffs also make certain transitional options available for specified periods of time, such as an option whereby customers would be permitted to continue to pay customer transition charges based on the neutral fact finder ("NFF") methodology.

In order to establish an index-based MV tariff suitable for long term fair competition and to establish a process designed to fairly and accurately reflect the market value of power and energy, the Interim Order also directed all interested parties

to actively participate in Commission sponsored workshops to be scheduled by the Commission. These workshops will consider future modifications and improvements to the index-based MV methodology, and are intended to result in recommendations to the Commission, as part of the instant proceeding, for possible modifications to the index-based MV tariff which became effective May 1.

Rehearing Request

On May 12, 2000, Enron Energy Services, Inc. ("Enron"), an Intervenor, filed an application for rehearing. Enron argues, in part, that the Commission "should grant rehearing and reject ComEd's proposed alternative to the neutral fact-finder ("NFF") process." Enron believes the Interim Order entered by the Commission implements an inappropriate replacement for the current NFF process that would harm Enron, its customers and other Illinois consumers. Enron also says it wants expedited treatment of its rehearing application. According to Enron, expedited action would be consistent with the manner in which the Commission treated the instant proceeding, and is necessary to secure parties' rights to a meaningful appeal of the Interim Order to the appellate courts.

Under Section 10-113 of the Act, the Commission has 20 days in which to grant or deny a rehearing application. Thus, the deadline for a rehearing application filed May 12, assuming it were properly before the Commission in other respects, would be June 1.

Generally speaking, under the appeal process in Section 10-201 of the Act, only final orders may be appealed to the appellate courts, and completion of the rehearing process under Section 10-113 is a prerequisite thereto. In the instant docket, the order entered by the Commission on April 27 was an interim order, not a final order. The proceedings in Docket 00-0259 are still pending before the Commission, and further activities in this docket are clearly contemplated before a final order will be entered. Therefore, it appears that any rehearing applications, and any Commission action on the merits thereof, would be premature at this juncture. Accordingly, it is my recommendation that Enron's rehearing application be Dismissed as premature, without prejudice to being refiled after entry of a final order in this docket. Commission action could be taken on May 16, or on a later date such as May 31 or June 1.

Docket No.: 00-0259
Pre-Bench Date: 05-31-00
Deadline: 06-19-00 (if applicable)

SUPPLEMENTAL MEMORANDUM

TO: The Commission
FROM: Larry Jones, Hearing Examiner
DATE: May 30, 2000
SUBJECT: Commonwealth Edison Company

Petition for expedited approval of implementation of a market-based alternative tariff, to become effective on or before May 1, 2000, pursuant to Article IX and Section 16-112 of the Public Utilities Act.

STATUS: An Interim Order was entered and served on April 27, 2000.

UPDATE: Applications for rehearing were filed this afternoon, May 30, on behalf of the People of the State of Illinois, by the Attorney General of the State of Illinois ("AG"), and by the Illinois Industrial Energy Consumers ("IIEC").

Applications for rehearing were filed this afternoon, May 30, by the AG and by the IIEC. As the Commission is aware, and as discussed in a memorandum dated May 19, a rehearing petition in this matter was previously filed by Enron Energy Services, Inc. ("Enron") and is before the Commission for consideration at the May 31 prebench.

Deadlines for action are June 1 for the Enron petition, and June 19 for the other two.

LMJ/lw